

**MINUTES OF THE MEETING  
OF THE BOARD OF DIRECTORS  
OF THE DEPARTMENT OF WATERWORKS**

**DATE: DECEMBER 19, 2002**

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The meeting of the Board of Directors (the "Board") of the Department of Waterworks (the "Department") was called to order by John Mutz, Chairperson of the Board at 5:00 p.m. in the Public Assembly Room of the City-County Building, 200 E. Washington Street, Indianapolis, Indiana. The following Board members were present: Jack Bayt, Beulah Coughenour, Barbara Howard, S. Michael Hudson, Alan Kimbell, Samuel L. Odle and John Mutz. Chairperson Mutz stated that public notice had been provided pursuant to applicable law.

**I. Approval of the Minutes of November 18, 2002**

Chairperson Mutz asked for questions or comments from the Board concerning the minutes of the November 18, 2002 meeting of the Board as set forth in Exhibit A, attached hereto and made a part hereof ("Minutes"). Chairperson Mutz requested that the Board review the Minutes. A motion was made and seconded to approve the Minutes. The Board unanimously approved the Minutes.

**II. Remarks of Chairperson Mutz**

Chairperson Mutz stated he is changing the order of the agenda for the meeting. He announced that the Department and NiSource, Inc. had completed the true-up process as to the final purchase price for the purchase of the assets of the Indianapolis Water Company. He stated that approval of the final true-up allocation by the Department does not prevent either NiSource or the Department from pursuing actions or matters that may exist under the asset purchase agreement.

Chairperson Mutz announced that he and Carlton Curry, Director of Contracts and Operations of the Department, had met with the principals of the Town of Plainfield to discuss a disagreement between the parties concerning a supply contract and Plainfield's interest in acquiring the assets of Liberty Water.

Chairperson Mutz recognized employees of USFilter Indianapolis Water, LLC ("USFIW") and former employees of the Indianapolis Water Company. He stated that upon the advice of counsel and in light of the current litigation addressing the employees' matters, public comments by the Board and testimony cannot occur during the Board's meeting. Chairperson Mutz stated that he recognizes Mr. Kimbell concerning a motion for the Board's consideration regarding some of the concerns of the employees.

### **III. Resolution to Retain Third Party to Review Employee Benefits**

Mr. Kimbell stated that he moves that the Board consider a resolution that hopefully will begin to bring closure to certain matters that have been previously publicized. The resolution as set forth in Exhibit C, attached hereto and made a part hereof, was submitted for adoption.

The motion was seconded by Mr. Bayt. Vice chairperson Odle asked if the Department or the City should undertake such action. He stated that he understands the concerns raised by the employees. Mr. Kimbell stated that the Board is responsible for the administration of the waterworks assets and that there is no other body in the municipal administrative structure that has the capacity to undertake the aforementioned action. He added that the results of any such action in any event would likely be addressed by the Board.

Kobi M. Wright, Special Assistant Corporation Counsel, stated that given that City-County Council created the Department to manage the waterworks assets and the management agreement with USFIW, the Department is the proper forum to make a decision to retain a third party to conduct a review of the benefits. He added that it is the decision of the Board as to whether it wishes to do so.

Mr. Bayt asked if the Board discerns an incongruity in the employee benefits based on the consulting firm's report, will the Board have rectify such change. Chairperson Mutz replied no and that the resolution is limited to investigating the matter. He stated that the employees are not Department employees but those of USFIW. He added that the Department has substantial influence with USFIW.

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Mr. Hudson asked if a benchmark of industry standards is a part of the resolution. Mr. Kimbell stated that if Mr. Hudson chooses to elaborate on the resolution submitted by himself that would be fine. Chairperson stated that the resolution contemplates that the Executive Committee will choose the conditions of engagement which could include establishing such benchmarks. Mr. Kimbell agreed.

Ms. Coughenour asked if the Board would be able to review the report before it is complete. She added that there might be a difference between the terms of the management agreement and written documents dated prior to the management agreement. Chairperson Mutz stated that any Board member is welcome to examine what the Executive Committee is working with.

Vice chairperson Odle stated he supports the motion but that if this review leads to the Board serving as a mediator on the employee benefits matter, that appears to be outside of the purview of the Board.

Mr. Wright stated that given that the Board is a named defendant in a lawsuit concerning matters to be addressed in the resolution currently up for consideration, the Department cannot serve as a mediator.

Chairperson Mutz asked for any further discussion. Given that no additional discussion was noted, Chairperson Mutz called for a vote on the resolution. The Board unanimously approved the resolution.

#### **IV. Financial Report of the Controller**

Mr. Robert Erney, Financial Manager of the Department, read the financial report of the Controller as set forth in Exhibit C, attached hereto and made a part hereof ("Financial Report").

Chairperson Mutz asked Mr. Erney what is the status of the aging accounts receivable that the Department assumed in the asset purchase. Mr. Erney stated the situation is improving.

Mr. Hudson asked if the pension trust payments are a fixed monthly amount and are they consistent with the requirements of the relevant governing bodies and the grantor trust. Mr. Erney stated affirmatively.

Vice chairperson Odle asked if Mr. Erney was able to make a comparison to aging accounts receivable of last year. Mr. Erney replied no but that he is investigating industry standards on the matter.

Vice chairperson Odle asked if the Financial Report states the amount of consulting fees spent year to date. Mr. Erney stated affirmatively.

Mr. Kimbell asked that staff deliver to the Board a current statement of all consulting costs by payee. Mr. Hudson asked that the statement differentiate those costs by transaction.

Mr. Erney announced that the true-up process with NiSource is complete. Chairperson Mutz asked if any items are currently in dispute with NiSource. Mr. Erney stated no.

## **V. Report of USFilter Indianapolis Water, LLC**

Mr. James H. Buckler, Operations Manager of USFIW, read the report of USFIW as set forth in Exhibit D, attached hereto and made a part hereof (“USIFW Report”).

Mr. Kimbell asked what would occur if an employee had a medical emergency and needs to attend a Clarian facility. Mr. Buckler stated that the Board should have received an e-mail on this matter prior to this meeting and answered that the matter is considered an emergency condition and thus is a non-issue.

Mr. Kimbell stated that he has heard of several instances reported to him one of which involved the wife of a retiree who wished to use their current physician whom referred them to Methodist. He stated that when the husband submitted his CIGNA card to Methodist, the card was not accepted. He added that the husband had to go to the bank and withdraw funds to submit to Methodist. He stated that another instance involved a retiree who currently has a Methodist physician but is worried that he will no longer be able to use him.

Mr. Kimbell stated that USFilter in Palm Desert, California has communicated to him that USFilter contracts with: Blue Cross/Blue Shield of Massachusetts, Blue Cross/Blue Shield of Michigan, Capital Health Plan, CIGNA Worldwide Insurance Companies, CIGAN behavioral health, Connecticut General Life Insurance, and others. He asked USFIW to consider an alternative to the current CIGNA coverage given the aforementioned list of insurance companies contracting with USFIW and his belief that the current coverage is inadequate.

Mr. Buckler responded that USFIW has investigated the first instance and will send the Board an email addressing this matter. He added that in the instance of the retiree that person should contact USFIW’s human resources. Mr. Buckler stated that the he has seen the list of insurance companies Mr. Kimbell referenced and that he would address Mr. Kimbell’s concern.

Mr. Kimbell requested that Mr. Buckler send his NPDES correspondence that he previously delivered to the board to the Department’s staff to send to Mr. Pratt. Mr. Buckler responded affirmatively.

Ms. Howard stated she has received a summary of the disconnects year to date but did not have anything to compare it to. Tom Bruns of USIFW stated that a complete list of

prior year disconnects cannot be obtained but that he will continue to work to produce some comparison to year to date disconnects.

Vice chairperson Odle asked how many local people are in the USFIW human resources office. Mr. Buckler stated that other than an impending retirement and one person who is not working due to an injury the office is the same size as it was prior to USFIW managing the facility. Vice chairperson Odle stated that with upcoming contract negotiations and given that employees may not have the comfort level with non local USFilter people as it would with local human resources staff, he assumes USFIW will gear up the local office for upcoming negotiations.

Mr. Buckler stated that he intends to draw upon the USFilter resources and that USFIW is reviewing resumes to replace the outgoing retiree.

Chairperson Mutz asked about the level of material in Morse. Mr. Buckler stated it is one of the four parameters monitored by USFIW that causes taste and odor in water. Buckler stated this matter is related to algae and will be further monitored.

Chairperson Mutz stated the Board is very pleased with low number of complaints concerning taste and odor. He asked if the current state of taste and odor is attributable to rainfall levels or treatment by USFIW. Mr. Buckler responded that currently it is difficult to discern.

Chairperson Mutz asked when will USFIW be at a position where no longer have large numbers of incorrect bills. Mr. Buckler stated that within the next 45 days that list should be exhausted.

## **VI. Update of USFIW-Indiana University Purdue University at Indianapolis (“IUPUI”) Partnership- Dr. Lenore Tedesco, Director of the Center for Earth and Environmental Sciences (“CEES”), IUPUI**

Mr. Buckler stated that USFIW is pleased to be partnering with IUPUI and Dr. Tedesco. Dr. Tedesco then presented her report as set forth in Exhibit E, attached hereto and made a part hereof (the “Tedesco Report”).

Mr. Hudson asked what is the relationship between IUPUI and regulatory bodies and if federal funding exists for the works she is undertaking with USFIW. Dr. Tedesco stated that a good relationship exists between CEES and regulatory bodies and information is jointly shared among them. She added that federal funds exist for the work CEES is conducting with USFIW and CEES is utilizing such funds.

Ms. Coughenour asked if the results of CEES’ work would be available to other departments of Indianapolis concerning its work on watersheds. Dr. Tedesco responded affirmatively.

Mr. Hudson asked if Dr. Tedesco can forecast the remaining life of the reservoirs. Dr. Tedesco stated this spring expect to conduct a geological survey of Eagle Creek Reservoir to measure the accumulation of sediment in the reservoir. She added that this information will be useful to conduct such a forecast.

## **VII. Report of Director of Contracts and Operations**

Mr. Curry read the report of the Director of Contracts and Operations as set forth in Exhibit F, attached hereto and made a part hereof (“Operations Report”).

Chairperson Mutz asked for spending amounts for the Department’s 2002 consultant contracts. Mr. Curry stated DLZ and Shrewsberry & Associates, LLC did not spend all of the funds budgeted by the Department to their contracts. He added that Malcolm-Pirnie nearly has spent all of the 2002 funds allocated to its contract and that Goldwest, LLC has spent all of the funds allocated to its contract.

Chairperson Mutz asked if Mr. Curry expects to request annually an allocation of funds commensurate to the level requested in 2003 for consultants. Mr. Curry stated affirmatively for the near future but has not determined what the amount should be in the long term.

## **VIII. Presentation of Form 2002 Incentive Criteria Analysis**

Mr. Curry summarized the form of the 2002 incentive criteria analysis as set forth in Exhibit G, attached hereto and made a part hereof (the “2002 Incentive Form Analysis”).

Mr. Curry stated that the 2002 Incentive Form Analysis is based upon exhibit 12 of the management agreement between USFIW and the Department and negotiations of the sale of Utility Data Corporation (“UDC”) to USFIW.

Mr. Hudson asked if the 2002 Incentive Form Analysis reflects revisions due to Smarte Suite under performance. Mr. Curry responded affirmatively.

Chairperson Mutz stated that given that the waterworks assets are no longer measured by for profit performance, the results of the incentive criteria evaluation of the management agreement are a proxy to measure the performance of the contractor. He asked how long will the form of the evaluation exist. Mr. Curry responded for twenty years provided that if certain growth occurs by the fifth year of the management agreement, the incentive criteria form could change.

Mr. Odle asked if the grading occurs on a quarterly or annual basis. Mr. Curry responded that the calculation is annual.

## **IX. Presentation by American Water Works Association Research Foundation (“AWWARF”)**

Mr. Curry introduced Ms. Kim Linton of AWWARF.

Ms. Linton presented a summary of information concerning AWWARF as set forth in Exhibit H, attached hereto and made a part hereof.

Mr. Hudson asked if AWWARF does any lobbying. Ms. Linton responded for funding only. She added that some AWWARF data is used by the federal government to draft regulations.

Mr. Hudson asked if AWWARF has relationships with municipalities that own waterworks assets but contract the operations thereof to the private sector. Ms. Linton stated Atlanta and other s are members and pay the full amount. She added that the contractors in public-private arrangements pay a membership fee based on the value of consultant arrangements and not flow rates unlike regular members. She did not have information as to the financial measurement of USFIW’s membership.

Chairperson Mutz stated that the Board will ask Mr. Curry to examine this matter and make a recommendation but that the Board will examine whether there is an incentive for the Department to become a member given the likely nature of USFIW’s membership involvement.

Chairperson Mutz stated that any funds paid to AWWARF takes away from the amount available to spend on capital. Ms. Linton responded that membership may provide savings on capital allocations.

Chairperson Mutz responded that the Department would enjoy that savings already as a result of USFIW’s membership. Mr. Hudson responded that the Department does not have staff that conducts research.

## **X. Resolution 53, 2002- Approval of Sale of Land to Hamilton County for Improvements to Fall Creek Road at Geist Reservoir and 96<sup>th</sup> Street**

Kobi M. Wright, Special Assistant Corporation Counsel, summarized Resolution No. 53, 2002.

Mr. Odle asked if the transfer would adversely affect the recreational use of the reservoir. Mr. Curry responded no.

A motion was made and seconded to adopt the resolution. The Board unanimously adopted Resolution 53, 2002.

## **XI. Resolution 54, 2002- Approval of 2003 Consulting Agreements**

Mr. Curry summarized Resolution 54, 2002. Mr. Kimbell stated he intends to abstain from voting on DLZ.

Mr. Odle asked if the Board would be able to retain a consultant later in 2003 to address a discrete matter that falls under the general workscope of approved consultant agreements. Mr. Curry stated affirmatively and that the Board would be able to amend a consultant agreement.

A motion was made and seconded to adopt the resolution. The Board unanimously adopted Resolution 54, 2002 with Mr. Kimbell abstaining from the vote as to the approval of the consulting agreement with DLZ.

## **XII. Resolution 55, 2002-Approval of the Contract Award for the Purchase of Backhoe Vehicle**

Mr. Wright summarized Resolution 55, 2002. Ms. Howard asked for clarification as to the price of the vehicle. Mr. Wright stated that with options the vehicle is over \$75,000 in amount.

Mr. Odle asked if these projects would be submitted via public bidding. Mr. Curry responded that these capital projects will be for USIFW work and its employees and those subcontractors engaged by USFIW via its bidding process.

A motion was made and seconded to adopt the resolution. The Board unanimously adopted Resolution 55, 2002.

## **XIII. Resolution 56, 2002-Approval of Capital Projects**

Mr. Curry summarized the resolution.

Chairperson Mutz asked if the Board will need to award every purchase contract. Mr. Wright responded that for those capital awards over \$75, 000 would come before the Board. Chairperson Mutz asked for the total amount of the 2003 capital budget. Mr. Curry stated approximately \$33 million total and \$21 million of the total is submitted for approval in Resolution 56, 2002.

A motion was made and seconded to adopt the resolution. The Board unanimously adopted the resolution.

## **XIV. Other Business**

Mr. Glenn Pratt thanked Mr. Wright and Mr. Curry for their work to forward to him documents concerning the Citizens Advisory Group ("CAG"). He stated that in his



opinion CAG does not include citizens. He asked for a revision to CAG to address that matter. Mr. Pratt also stated that he has not read USFIW's analysis concerning NPDES permit compliance. Mr. Pratt stated that he wishes to work with USFIW. Mr. Pratt also stated he is not aware of any water conservation work that has been conducted as a requirement of the management agreement.

Chairperson Mutz stated that he knows some of the individuals on CAG and that they are in fact citizens. He added that he is sympathetic to the notion the CAG shouldn't be dominated by industrial interests.

Clark Kahlo stated that he sympathizes with Mr. Pratt's water conservation and CAG comments.

Mr. Pratt asked where would he get legal documents examining why the Department of Waterworks was not formed in the manner of Citizens Gas. Mr. Kimball stated that Unigov language exists stating that any utility acquired by the consolidated city would be operated as the Department of Utilities which is Citizens Gas. Mr. Wright asked Mr. Pratt to contact him on this matter.

Chairperson Mutz stated that he helped author that law and that the intention of such a provision was not to operate all utilities under Citizens Gas.

Chairperson Mutz stated that per the advice of legal counsel, elections for Chairperson and vice Chairperson of the Board shall occur next month post the appointment of the two members of the Board whose terms are to end this year.

A motion was made and seconded to adjourn the meeting. The Board unanimously voted to adjourn the meeting at 7:15 p.m.

Approved this 28th day of January 2003.

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Samuel L. Odle, Vice Chairperson

Attest:

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S. Michael Hudson,  
Secretary-Treasurer